

DOCKET FILE COPY ORIGINAL

GARDNER, CARTON & DOUGLAS

1301 K STREET, N.W.

SUITE 900, EAST TOWER

WRITER'S DIRECT DIAL NUMBER

WASHINGTON, D.C. 20005

CHICAGO, ILLINOIS

LEE G. PETRO
(202) 408-7221
lpetro@dc.gcd.com

(202) 408-7100
FAX: (202) 289-1504
INTERNET: gcdlawdc@gcd.com

MEMBER
WORLD LAW GROUP
A GLOBAL NETWORK
OF INDEPENDENT
FIRMS LOCATED IN
30 COUNTRIES

February 22, 2001

RECEIVED

FEB 22 2001

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Magalie Roman Salas
Secretary, Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

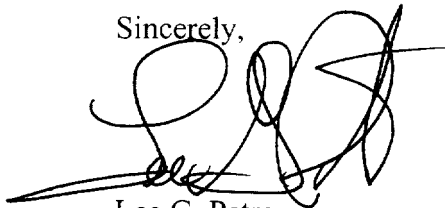
Re: ET Docket No. 00-258

Dear Ms. Salas:

Transmitted herewith, on behalf of DCT Los Angeles, L.L.C., are an original and four (4) copies of its comments filed in response to the Notice of Proposed Rulemaking, FCC 00-455, released January 5, 2001 in the above-referenced proceeding.

Should any questions arise in connection with this filing, kindly contact the undersigned.

Sincerely,



Lee G. Petro

DC01/355418.1

No. of Copies rec'd
List A B C D E

014

RECEIVED

FEB 22 2001

Before the
Federal Communications Commission
Washington, D.C. 20554

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of

Amendment of Part 2 of the Commission's Rules
to Allocate Spectrum Below 3 GHz for Mobile
and Fixed Services to Support the Introduction
of New Advanced Wireless Services, including
Third Generation Wireless Systems

ET Docket No. 00-258

Petition for Rulemaking of the Cellular
Telecommunications Industry Association
Concerning Implementation of WRC-2000:
Review of Spectrum and Regulatory
Requirements for IMT-2000

RM-9920

Amendment of the U.S. Table of Frequency
Allocations to Designate the 2500-2520/2670-
2690 MHz Frequency Bands for the Mobile-
Satellite Service

RM-9911

TO: THE COMMISSION

COMMENTS OF
DCT LOS ANGELES, L.L.C.

Thomas J. Dougherty
Lee G. Petro
Gardner, Carton & Douglas
1301 K Street, N.W.
Suite 900, East Tower
Washington, DC 20005-3317
(202) 408-7100 – Phone
(202) 289-1504 – Telecopier

FEBRUARY 22, 2001

SUMMARY

DCT Los Angeles, L.L.C. does not support the Federal Communications Commission proposed reallocation of the 2160-2165 MHz band. DCT is the licensee of two MDS Channel 2 stations that provide services to its customers, and the reallocation of a 2 MHz slice of its spectrum to a higher band would make the provision of these services impossible.

Rather than reallocating the 2160-2165 MHz spectrum, DCT urges the Commission to permit existing MDS and ITFS licensees to provide fixed and mobile advanced wireless services. Since these licensees already have authorization to provide fixed wireless broadband service, reallocation of this spectrum is not necessary.

However, should the Commission determine that it will reallocate the 2160-2165 MHz band, the Commission should require existing MDS Channel 1 & 2 licensees to turn in their licenses in exchange for the participation in a “Two-Sided” auction, as proposed by the Commission in prior rulemaking proceedings. The licensees would then be able to receive a pro-rata share of the value of the MDS license, and use these proceeds to construct its service on the reallocated spectrum.

DC01/355417.1

Table of Contents

Summary	i
DCT's Interest in this Proceeding.....	1
Background	2
Discussion of 3G Proposals	4
Alternative Proposals	8
Conclusion	11

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of)	
)	ET Docket No. 00-258
Amendment of Part 2 of the Commission's Rules)	
to Allocate Spectrum Below 3 GHz for Mobile)	
and Fixed Services to Support the Introduction)	
of New Advanced Wireless Services, including)	
Third Generation Wireless Systems)	
)	
Petition for Rulemaking of the Cellular)	
Telecommunications Industry Association)	RM-9920
Concerning Implementation of WRC-2000:)	
Review of Spectrum and Regulatory)	
Requirements for IMT-2000)	
)	
Amendment of the U.S. Table of Frequency)	RM-9911
Allocations to Designate the 2500-2520/2670-)	
2690 MHz Frequency Bands for the Mobile-)	
Satellite Service)	

TO: THE COMMISSION

COMMENTS OF
DCT LOS ANGELES, L.L.C.

DCT Los Angeles, L.L.C. ("DCT"), hereby submits its comments in response to the *Notice of Proposed Rule Making*, FCC 00-455 (the "*Advanced Services NPRM*") in the above-captioned matter. The *Advanced Services NPRM* was released in the *Federal Register* on January 23, 2001, thus establishing February 22, 2001 as the filing deadline for these Comments. 66 FED. REG. 7438 (Jan. 23, 2000).

I. DCT's Interest in This Proceeding

The *Advanced Services NPRM* proceeding is considering whether to reallocate or otherwise provide spectrum for advanced services, including "Third Generation" ("3G") wireless services or IMT-2000 services. The Commission has proposed three different options for the provision of 3G

services.¹ Two of the frequency bands under consideration for this purpose are the 2110-2150 MHz and 2160-2165 MHz bands.²

DCT has interests in the licensee of two MDS channels – the Anaheim MDS Channel 2 station WGX394 and the San Bernardino MDS Channel 2 station WHT573 (collectively the “Stations”). The Stations operate on the 2156-2162 MHz band. The reallocation of the 2160-2165 MHz band to 3G services would deprive the licensee of one-third of the bandwidth of each of its MDS channels.

While the Stations do not use spectrum within the other band, *i.e.*, 2110-2150 MHz, the proximity of the Stations to the 2110-2150 MHz band, along with the fact the MDS Channel 2 constitutes a large portion of a narrow separation between these two bands, *i.e.*, 2150-2160 MHz, raises the prospect that action with respect to the 2110-2150 MHz band will greatly impact MDS Channel 2, and thus, the Stations licensed to DCT. Accordingly, DCT have a vital interest in this proceeding, and experience with the facts involved in the Commission’s determinations in this proceeding.

II. BACKGROUND

DCT’s MDS History

DCT paid fair market value for the Stations. DCT purchased the license for the Anaheim MDS 2 station in 1991 from the original licensee, Broadcast Data Corporation, in a private transaction. DCT acquired the license for the San Bernardino MDS 2 station in March 1993

¹ Advanced Services NPRM, ¶¶ 66-69. The first option proposes pairing three noncontiguous bands, 1710-1755 MHz, 2210-2150 MHz and 2160-2165 MHz (“Option 1”), which yields 90 MHz for 3G uses. The second option proposes the pairing of 1710-1755 MHz and 1755-1850 MHz bands (“Option 2”), which yields 140 MHz for 3G uses. The final option proposes to pair either the 2210-2150 and 2160-2165 MHz bands, or the 1710-1755 MHz band with the 2500-2690 MHz band (Option 3”), which would yield 230 MHz for 3G uses.

² Advanced Services NPRM, ¶ 50.

through a competitive auction held on behalf of The Microband Companies Inc. in the context of a bankruptcy proceeding.

Each of the Stations provides service to portions of the Los Angeles, CA Basic Trading Area (“BTA”). The Anaheim MDS station has in excess of 2,500,000 line-of-site homes within its protected service area (“PSA”). The San Bernardino MDS station has in excess of 590,000 line-of-site homes within its PSA. Thus, the Stations provide line-of-site service to a substantial number of the 14,550,000 persons in the Los Angeles BTA.

Since 1991, DCT, by itself or through an affiliate, has used the Stations in analog mode to deliver regional news programming to cable systems and related entities. Initially, DCT carried Headline News Local Edition, which is produced and distributed, respectively, on behalf of KCAL-TV/Channel 9 and Adlink, a cable advertising interconnect firm, to over 20 greater Los Angeles area cable systems serving over a million subscribers. A second service, Orange County Newschannel, which is now owned by Adelphia Communications, was later added and is distributed to cable systems with over 550,000 subscribers. Many FCC licensees in major US markets utilize either MDS or ITFS channels to deliver regional cable distributed news, including Bay Cable News and ChicagoLand TV.

At present, the Stations provide secondary feed service to the cable headends. However, the combination of the adoption of Resolution 223 by the 2000 World Radiocommunication Conference,³ along with the FCC’s identification of 2160-2165 MHz band for emerging technologies,⁴ has placed a cloud over the 2160-2162 portion of this spectrum, and has placed MDS operators in a position in which they simply cannot find better uses of the spectrum.

³ See Provisional Final Acts of the World Radiocommunications Conference (Istanbul, WRC-2000), Resolution 223 (stating that an additional 160 MHz of spectrum will be required for adequate introduction of 3G services).

⁴ Redevelopment of Spectrum to Encourage Innovation in the Use of New Telecommunications Technologies, First Report and Order and Third Notice of Proposed Rulemaking, 7 FCC Rcd 6886 (1992) (“We observe that the 2.160-

MDS Commercial Channel Status In Greater Los Angeles

WorldCom has acquired the Los Angeles MDS BTA authorization, and operates both an analog wireless cable system in the Inland Empire area (Riverside & San Bernardino Counties) and a digital video wireless cable system in Los Angeles and Orange Counties. DCT is the only non-WorldCom controlled (by lease or license) MDS frequency in the Inland Empire and it is one of two "independent" frequencies in Anaheim.

Six of the seven licensed MDS Channels in the 2150-2162 MHz bands in Riverside, San Bernardino, Los Angeles, and Orange Counties are neither licensed to, or otherwise controlled by, Worldcom, including Anaheim MDS Channel 1 station KFI79, Los Angeles MDS Channel 1 station KFF79, San Pedro MDS 1 station WPY40, which are commonly-owned, along with Los Angeles MDS Channel 2 station WHD479, which is independently-owned and operated. Given the highly-fractured state of the Los Angeles MDS market, it is highly likely that, should the Commission reallocate the 2160-2165 MHz band, the resulting chaos caused to these independent operators would result in substantial and long-term disastrous effects.

III. DISCUSSION OF 3G PROPOSALS

The Impact of the Proposal to Reallocate a Portion of the 2156-2162 MHz Band

The mere suggestion that MDS Channel 2, and for that matter, any MDS and/or ITFS channel, may be reallocated to clear the way for 3G services, already has had a highly detrimental effect on the use and perceived value of the spectrum. Long the red-headed child of the Commission, the wireless cable industry has finally received authorization from the Commission, combined with the development of new technologies, to institute a viable business plan. In fact, the

2.162 GHz band is used by MDS systems for the upper end of channel 2 in certain locations... Our proposal was to allocate this 2 MHz to emerging technologies. We are adopting this proposal, and any authorization of additional stations to use this 2 MHz for MDS applied for after January 16, 1992 shall be secondary to its use for emerging technologies.")

Commission called for, and is currently reviewing, applications for MDS Channels 1 and 2 to provide two-way services.

The suggestion that this spectrum now will be reallocated, with the MDS and/or ITFS licensees moved to an uncertain new location on the spectrum, puts into jeopardy the plans developed in response to the Commission's encouragement, and raises questions as to why any company would invest money, time and effort in systems supported by spectrum that may soon be reallocated.

The end result is that the Commission has raised the specter of creating stranded licensees when its long term goal has always been to develop an efficient spectrum allotment plan. As a result, DCT encourages the Commission to fully review the comments received from affected licensees and, in the event that the 2160-2165 MHz band is reallocated, to move quickly to conclude the rulemaking proceeding and remove the cloud it has placed on the spectrum.

The Impact of a Re-Allocation of the 2160-2165 MHz Band on DCT's Analog Service

The reallocation of the 2160-2165 MHz band for 3G purposes would deprive the Stations of one-third of their bandwidth. The remedy would presumably be that MDS Channel 2 licensees would either (i) receive a 2 MHz slice of the spectrum in another band, or (ii) face the modification of their licenses to specify 4 MHz of bandwidth. Either scenario is unsatisfactory.

First, should the Commission split MDS Channel 2's bandwidth between two non-contiguous bands, it would leave the licensees with little of discernable value. The lower portion of the channel, *i.e.*, 2156-2160, would no longer be able to transmit in analog format. To DCT's knowledge, there is no video digital encoding equipment designed to operate in just a 4 MHz bandwidth. Indeed, we cannot imagine that any equipment manufacturer would forecast a sufficiently large and sustainable market for 4 MHz bandwidth equipment operable between 2156

and 2160 to justify even the research and development cost of such equipment, let alone the actual production and sale of it. Consequently, DCT would have to review the merits of digital delivery of regional TV programming or other data in a downstream mode in its remaining 2156-2160 MHz band.

Even making the unlikely assumption that 4 MHz equipment will be produced, we doubt that it would be made available at a cost that would allow this stranded 4 MHz of bandwidth to transmit affordably to residential consumers as neither digital video receiving equipment nor any service offering package to deliver one or even a dozen compressed digital channels would be cost competitive to cable, DBS or ADSL.

Additionally, the spectrum allocated for migration from 2160-2162 MHz, as suggested by the *Advanced Services NPRM*, would be to a much higher band where, not only is the displaced 2 MHz worth of spectrum incapable of operating along with the remaining 4 MHz, the costs of operation are significantly increased, the coverage is reduced and the reliable throughput potential is greatly reduced. Even without the detriments associated with a new higher band spectrum home, DCT would be hard-pressed to continue its current business plan.

Alternatively, the rescission of 2 MHz of spectrum from current MDS Channel 2 licensees would require an additional notice and comment proceeding,⁵ and would certainly cause substantial delays and uncertainty.

Thus, if the Commission intends to reallocate 2160-2165 MHz, the only acceptable, albeit minimally acceptable, action would be to reallocate the entire MDS Channel 2, *i.e.*, the entire 6 MHz

⁵ Proposals that widely depart from the original proposals contained in a Notice of Proposed Rulemaking must be separately proposed. See *e.g.*, *Small Refiner Lead Phase-Down Task Force v. EPA*, 705 F.2d 506, 547, 549 (D.C. Cir. 1983) (holding that final administrative rules that depart from an agency's initial proposals do not require new notice and comment if the final rules are a "logical outgrowth" of the proposals). Clearly, should the Commission determine that it will require the return of the 2 MHz of spectrum, rather than the reallocation of the bandwidth, incumbent MDS licensees should have an opportunity to address this matter specifically.

of bandwidth. However, merely providing 6 MHz of bandwidth at a higher frequency band would not be enough to make this bandwidth valuable to the public. Since the Stations are licensed at 100 watts, which allows for service well beyond the current 35-mile protected service area, the Stations would lose service area at the higher band unless transmit power is substantially increased. At higher frequencies, much more power consumption is required, since otherwise, MDS Channel 2 licensees would lose both throughput capacity and coverage.

For example, when the Commission reallocated the Digital Electronic Messaging Service (“DEMS”) from the 18 GHz band to the 24 GHz band, the Commission found it necessary to increase the authorized transmit power from 10 MHz to 40 MHz. If the DEMS example is used, and the Commission reallocates the MDS Channel 2 to a similar higher frequency, the Commission would have to authorize an increase of at least *four to eight times* the current authorized transmit power.⁶

The main cause for this substantially adverse, and commercially unviable, result is that a significant number of repeaters would be required to replicate service at higher bands, thus requiring substantially more bandwidth to avoid co-channel and adjacent channel interference. Moreover, unless the new spectral home comes with enough bandwidth and power, there is no guarantee that marketplace demand and equipment supply issues will balance out to allow timely development of cost effective and spectrally efficient equipment much less a successful new business plan, funding and implementation.

⁶ See Amendment of the Commission's Rules to Relocate the Digital Electronic Message Service From the 18 GHz Band to the 24 GHz Band and to Allocate the 24 GHz Band For Fixed Service, Order, 12 FCC Rcd 3471 (1997) (“[a]suming use of similar equipment in all other respects including transmit power, systems at 24 GHz will require approximately four times the bandwidth as at 18 GHz to maintain equivalent capacity and coverage.”)

The Effect of a Migration of 2160-2162 MHz on MDS Channel 1

MDS Channel 1 at 2150-2156 MHz stands adjacent to MDS Channel 2. At present, in markets where MDS is used to deliver high speed access, the utility of MDS 1 primarily is providing a return path along with MDS Channel 2 for two-way MDS/ITFS fixed wireless systems. So significant is the MDS 1 and 2 spectrum for this purpose that by industry consensus it is the first and main choice for such return paths. This choice is embodied in the so-called “Breckenridge Agreement,” which represents perhaps the most far-reaching, creative, improbable and significant example of telecommunications industry self-regulation ever witnessed. Without this agreement, many industry observers believe that two-way MDS/ITFS – which otherwise has no dedicated return path spectrum – cannot be a reality.

If anything is done in this rule making to impair the utility of MDS Channel 2, it will also impair the utility of MDS Channel 1 as an essential channel under the Breckenridge Agreement, because the primary return path spectrum will be sliced in half. The result we expect is greater reliance upon frequencies within 2500-2686 MHz for return path purposes, and a corresponding retirement and loss of value of MDS Channel 1.

IV. ALTERNATIVE PROPOSALS

BEST ALTERNATIVE:

Flexible use of MDS Channels 1 and 2 For Current Licensees

As discussed above, DCT is opposed to any split of the spectrum associated with MDS Channel 2. Rather, the Commission should focus upon allowing the incumbent licensees to evolve along with technological developments, consistent with the flexible-use concept that has been the hallmark of MDS since its creation in the mid-1970s.

To this end, and to allow the marketplace to better determine the use of MDS Channels 1 and 2, DCT is in favor of its spectrum being reallocated for advanced wireless services use, including

mobile applications, without a concurrent auction. Thus, DCT is in support of the Commission looking to the current licensees of MDS Channels 1 and 2 to initiate advanced wireless services in the 2150-2162 MHz band. This would be in accordance with the *Emerging Technologies* rulemaking, in that the spectrum would be used for new and innovative communications services, while not jeopardizing the ability of the current licensees to continue to provide existing services.

Furthermore, DCT is open to working with its co-channel and adjacent channel licensees as well as 2,500-2,690 MHz licensees/operators as well as any auction winners of the NPRM proposed 2110-2150 MHz spectrum and/or 2162-2165 MHz band.

ALTERNATIVE PROPOSAL:
“Two-Sided” Combinatorial Auction

If the Commission determines that it will not merely reallocate the 2150-2162 MHz band to provide advanced wireless services, DCT continues to believe that the Commission should consider the MDS Channels 1 and 2 spectrum together for planning purposes.

To that end, DCT proposes that the Commission group the 2150-2162 MHz band with the 2110-2150 MHz and the 2162-2165 MHz bands, and auction the entire group in a combinatorial auction for advanced services. The critical part of this alternative plan is that the current licensees of MDS Channels 1 and 2 must be required to turn in their licenses to the Commission for auction and have the licenses modified to specify a new spectrum band.

In exchange for the relinquishment of the frequency, the proceeds of the auction would be split between the U.S. Treasury and the incumbent licensees on a pops/MHz basis. This alternative was proposed in the 1999 *Principles for Reallocation of Spectrum to Encourage the Development of Telecommunications Technologies for the New Millennium*, Policy Statement, 14 FCC Rcd 19868 (rel. Nov. 22, 1999). Specifically, the Commission raised the possibility that future auctions could provide an option for:

existing licensees [to] opt to offer their licenses in conjunction with a Commission auction of licenses for new spectrum, in exchange for relocation to other spectrum or other compensation.

Id., ¶ 12. The use of this approach would most equitably, wisely and efficiently deal with the unique issues surrounding MDS Channels 1 and 2. Current rights holders in these bands would have either the bidding advantage of not having to pay themselves for the portion they already are licensed if they entered and emerged the high bidder of such an auction, or they and the FCC would be the proportionate recipients of payments by the high bidder.

This approach would serve to blunt the difficulties inherent in any scheme to relocate the 2160-2162 MHz portion MDS Channel 2. No relocation would be required except for non-winning part 21 or part 101 licensees. MDS licensees or the BTA owner would be either the winner, the total proportionate beneficiary for their area on a 2000 census-based population count, or if they lost, might have to share the auction amount for their rights areas with any lessee to whom they are contractually obligated (assuming they can not extricate themselves from such commitments before or after the auction).

An incumbent MDS licensee who did not bid or did not win would likely be motivated to use its auction proceeds to research and develop market oriented service at whatever new frequency it is assigned by the FCC so long as the assigned bandwidth and power levels are significant enough to be competitive in the marketplace. The MDS BTA owner who bid and won would be getting both any incumbent MDS 1, 2 or 2A PSA territory it had not owned or leased plus 3-5 MHz of adjacent spectrum. Combined this would equal 15 MHz which, with flexible use allowed, would be comparable to current PCS licenses. The MDS BTA owner who did not bid, or who lost, still retains its license or lease rights to the commercial portion of the 2,500-2,690 MHz band, 11 channels each 6 MHz including the E, F and H bands, plus any other lease relationships with ITFS

licensees that are in place. Further, in-band technology now available should allow for significant deployment of two-way high speed access offerings by BTA owner/operators like Nucentrix, Sprint, Worldcom and others, funded by their share of the 2150-2162 MHz auction proceeds into their respective digital data and/or video business. A new entry auction winner of 15 MHz from 2,150-2165 MHz could be expected to implement whatever 3G new business plan it had based its bid on and paid for.

V. CONCLUSION

Thus, DCT urges the Commission to afford the incumbent MDS licensees to opportunity to provide advanced wireless services. Should the Commission determine that it will reallocate the 2160-2162 MHz band from MDS uses, then DCT urges the Commission to require existing licensees of MDS Channels 1 and 2 to turn in their licenses, in exchange for (i) reallocation to a higher spectrum band with an increase in bandwidth and transmitting power; and (ii) the ability to share in the proceeds of the "two-sided" action for its spectrum.

Respectfully submitted,

DCT LOS ANGELES, L.L.C.

By: 

Thomas J. Dougherty
Lee G. Petro
Gardner, Carton & Douglas
1301 K Street, N.W.
Suite 900, East Tower
Washington, DC 20005-3317
(202) 408-7100 - Phone
(202) 289-1504 - Telecopier

February 22, 2001

DC01/355168.3